UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,898	09/25/2003	William J. Masek	LOT920030024US1	5987

23550   7590   06/20/2006

HOFFMAN WARNICK & D'ALESSANDRO, LLC
75 STATE STREET
14TH FLOOR
ALBANY, NY 12207

EXAMINER
MITCHELL, JASON D

ART UNIT	PAPER NUMBER
2193	

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
	10/670,898	MASEK ET AL.
Office Action Summary	Examiner	Art Unit	
	Jason Mitchell	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2003*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

This action is in response to an application filed on 9/25/03.

Claims 1-26 are pending in this application.

Specification

The use of the trademark JAVA has been noted in this application. It should be

capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the

proprietary nature of the marks should be respected and every effort made to prevent

their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

Claims 9 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention.

Claims 9 and 18 recite "instantiating a plurality of instances ... if the test application

satisfies reentrancy requirements" but do not provide any indication of what steps would

be taken if the test application does not satisfy reentrancy requirements. Thus it is

unclear exactly how the system and instructions would be expected to behave. Further,

Examiner could find no disclosure in the specification that would shed more light on this

language, nor any disclosure of what would constitute a set of "reentrancy

requirements".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form

the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-14, 16-23 and 25-26 are rejected under 35 U.S.C. 102(b) as being

anticipated by US 6,002,871 to Duggan et al. (Duggan).

Regarding Claims 1, 9 and 18: Duggan discloses providing a test application that

satisfies reentrancy requirements (col. 21, lines 57-61 'Each session is ... reentrant') on

a client (col. 5, lines 18-21 'the test tool ... runs on a single computer'); and instantiating

a plurality of instances of the test application using threads (col. 21, lines 57-61 'Each

session is executed as a separate thread'), wherein each of the plurality of instances of

the test application run within a single process (col. 21, lines 53-57 'The basic module

12 is also responsible for initiating multiple, concurrent sessions').

Note that Duggan's 'test application' satisfies reentrancy requirements (col. 21, lines 57-

61 'the reentrant nature of the test tool ... allows multiple sessions') and thus satisfies

the language recited in claims 9 and 18.

Further note that because Duggan's 'list box 272' displays only the commands from 'the

command module created for testing a given application' that particular 'command

module' must have been identified to the 'list box 272'.

Regarding Claim 2: The rejection of claim 1 is incorporated; further Duggan discloses

identifying application protocol interfaces (APIs) associated with the test application

prior to the instantiating step (col. 12, lines 21-23 'A list box 272 contains a list of all of

the commands in the command module created for testing a given application

program'); and providing a test script capable of invoking the APIs (col. 13, lines 59-62

'a test operator [can] create test scripts containing ... command module commands'),

wherein upon execution, the test script instantiates the plurality of instances of the test

application (col. 5, line 67-col. 6, line 3 'the test tool program executes multiple

concurrent sessions') using threads (col. 21, lines 57-61 'Each session is executed as a

separate thread') within the single process (col. 21, lines 53-57 'The basic module 12 is

also responsible for initiating multiple, concurrent sessions').

Regarding Claims 3, 14 and 23: The rejection of claims 1, 9 and 18 are incorporated

respectively, further; Duggan discloses the server application is a network application

(col. 5, lines 9-12 'a test tool for testing application programs ... over a network').

Regarding Claims 4, 12 and 21: The rejection of claims 1, 9 and 18 are incorporated

respectively, further; Duggan discloses the reentrancy requirements dictates that the

plurality of instances of the test application be run within the single process without

interfering with each other (col. 21, lines 57-61 'reentrant nature of the test tool').

Regarding Claims 5, 13 and 22: The rejection of claims 1, 9 and 18 are incorporated

respectively, further; Duggan discloses each of the plurality of instances of the test

application corresponds to a separate thread (col. 21, lines 57-61 'Each session is

executed as a separate thread'), and wherein each of the separate threads is

associated with a different connection to the server (col. 5, line 66-col. 6, line 3 'A

"session" refers to the execution of one test script, on one client connection').

Regarding Claims 7, 16 and 25: The rejection of claims 1, 9 and 18 are incorporated

respectively, further; Duggan discloses the plurality of instances of the test application

simulate use of the server application by a plurality of users (col. 6, lines 47-51 'the test

tool program ... is capable of executing test scripts ... based on a user list').

Regarding Claims 8, 17 and 26: The method of claim 1, 9 and 18 further comprising

collecting data corresponding to the test (col. 8, lines 4-6 'The test tool program ...

provides four options for logging information').

Regarding Claims 10 and 19: The rejection of claims 10, and 19 are incorporated

respectively, further; Duggan discloses an interface identification system for identifying

application protocol interfaces (APIs) associated with the test application (col. 12, lines

21-23 'A list box 272 contains a list of all of the commands in the command module

created for testing a given application program').

Regarding Claims 11 and 20: The rejection of claims 10, and 19 are incorporated

respectively, further; Duggan discloses the test application instantiation system

comprises a driver that executes a test script capable of invoking the identified APIs

(col. 13, lines 59-62 'a test operator [can] create test scripts containing ... command

module commands), and wherein upon execution, the test script instantiates the

plurality of instances of the test application (col. 5, line 67-col. 6, line 3 'the test tool

program executes multiple concurrent sessions') using threads (col. 21, lines 57-61

'Each session is executed as a separate thread') within the single process (col. 21, lines

53-57 'The basic module 12 is also responsible for initiating multiple, concurrent

sessions').

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable

over US 6,002,871 to Duggan et al. (Duggan) in view of "The Java[tm] Virtual

Machine Specification" by Lindholm et al (Lindholm).

Regarding Claims 6, 15 and 24: The rejection of claims 1, 9 and 18 are incorporated

respectively, further; Duggan does not disclose the process comprises a JAVA virtual

machine.

Lindholm teaches that JAVA programs, which run on a JAVA virtual machine were well

known at the time of the invention, and that JAVA programs and the JVM provided

benefits known to those of ordinary skill in the art. Accordingly it would have been

obvious to a person of ordinary skill in the art at the time of the invention to implement

Duggan's 'test tool' and 'basic module' in the JAVA programming language and execute

them on a JVM.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's
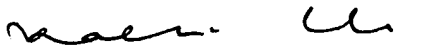
disclosure.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jason Mitchell whose telephone number is (571) 272-

3728. The examiner can normally be reached on Monday-Thursday and alternate

Fridays 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason Mitchell

5/31/06

KAKALI CHAKI

SUPERVISORY

TECHNOLOGY